

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ MAY 10 2018 ★

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PETER SIMEON, individually and on
behalf of all others similarly situated,

BROOKLYN OFFICE

Plaintiff,

MEMORANDUM & ORDER

- against -

17 CV 5550 (RJD) (ST)

DOMINOS PIZZA, LLC,

Defendant.

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DEARIE, District Judge

Plaintiff, Peter Simeon, originally filed this class action in New York State Supreme Court, Kings County, on August 30, 2017. Defendant removed the case on September 21, 2017, pursuant to the Class Action Fairness Act ("CAFA"). 28 U.S.C. §§ 1332, 1446. Relying primarily on Plaintiff's waiver of his right to bring a class action lawsuit, Plaintiff now moves to remand the action to New York State Supreme Court. Specifically, Plaintiff suggests that the class action waiver means Defendant fails as a matter of law to plausibly establish the class action requirements for CAFA jurisdiction, emphasizing also that not all of the claims are class claims. Further, Plaintiff challenges the calculation of class damages and argues that, contrary to Defendant's position, damages would not exceed the five million dollar threshold for CAFA.

Defendant, on the other hand, maintains that this is a putative class action within the meaning of CAFA because the class consists of more than 100 persons, minimal diversity exists (Plaintiff is a citizen of New York, while Defendant is incorporated in Michigan), and the amount in controversy requirement, exceeding five million dollars, is satisfied.

Consistent with the Court's findings on the record, Plaintiff's motion to remand is denied. The case was properly removed and properly remains. The Court is satisfied that Defendant has shown a basis for federal jurisdiction under the Class Action Fairness Act beyond a mere preponderance of the evidence.

SO ORDERED.

Dated: Brooklyn, New York
May 9, 2018

s/ RJD



RAYMOND J. DEARIE
United States District Judge